No. 83-185

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

SYLVIA COOPER, *et al.*,

*Petitioners,*

v.

FEDERAL RESERVE BANK OF RICHMOND

PHYLLIS BAXTER, *et al.*,

*Petitioners,*

v.

FEDERAL RESERVE BANK OF RICHMOND

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## JOINT APPENDIX

**PETITION FOR WRIT OF CERTIORARI FILED AUGUST 4, 1983**
**CERTIORARI GRANTED OCTOBER 31, 1983**

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 83-185

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SYLVIA COOPER, et al.,

Petitioners,

v.

FEDERAL RESERVE BANK OF RICHMOND

==========

PHYLLIS BAXTER, et al.,

Petitioners,

v.

FEDERAL RESERVE BANK OF RICHMOND

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On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

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# JOINT APPENDIX

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## I N D E X

Relevant Docket Entries

Cooper et al. v. Federal Reserve Bank

| Date | Entry |
|---|---|
| March 22, 1977 | Complaint |
| April 21, 1977 | Motion to intervene by Sylvia Cooper, Constance Russell, Helen Moore and Elmore Hannah, Jr., w/CS-Filed and proposed complaint in intervention |
| September 26, 1977 | Order allowing intervention (JBM) - Sylvia Cooper, Constance Russell, Helen Moore and Elmore Hannah allowed to intervene as plaintiffs. Copies to Counsel. |
| April 26, 1978 | Consent Order that<br>(1) plaintiffs-intervenors are certified to represent a class pursuant to FRCP Rule 23(a), (b)(2) and (b)(3).<br>* * *<br>(5) attached notice approved<br>* * * |
| October 30, 1980 | Memorandum of Decision - JBM |

. . . .

| | |
|---|---|
| February 27, 1981 | Defendant's Response to Plaintiffs' Proposed Findings of Fact and Conclusions of Law |
| March 24, 1981 | Motion for Leave to Intervene and To file Complaint-In-Intervention by Phyllis Baxter, Brenda Gilliam, Glenda Knott, Alfred Harrison, Emma Ruffin and Sherri McCorkle |
| May 29, 1981 | Order (JBM) -- all motions for leave to intervene are thus denied without prejudice to any underlying rights the intervenors may have .... |
| May 29, 1981 | Findings of Fact and Conclusions of Law (JBM).... |
| May 29, 1981 | Judgment (JBM).... |
| June 10, 1981 | Notice of Appeal by Defendant. .... |

Relevant Docket Entries
Baxter, et al. v. Federal Reserve Bank

| | | |
|---|---|---|
| 1981 | #1 | COMPLAINT and MOTION FOR CONSOLIDATION OF PROCEEDINGS [C-C-77-82]. |
| | #2 | MOTION FOR CONSOLIDATION OF PROCEEDINGS. |
| | | Summons Issued - Original summons w/copy, copy ea of COMPLAINT and MOTION handed to USM for serv. JS 5 Issued. |
| 05-21 | #3 | SUMMONS w/Marshal's Return - served FEDERAL RESERVE BANK OF RICHMOND w/Summons, Complaint & Motion by CM on 5-14-81. |
| 06-04 | #4 | RESPONSE to Motion for Consolidation tion, by defendant. |
| 06-04 | #5 | ANSWER to defandant with Jury Trial Demand. |
| 07-02 | #6 | MOTION TO DISMISS, by defendant. |
| 07-13 | #7 | RESPONSE to Defendant's Motion to Dismiss, by pl[aintiffs]. |
| 7-30 | | Placed on August, 1981 MOTIONS CALENDAR |
| 7-30 | #8 | REPLY to Plaintiffs' Response to Dismiss by defendant |

8-14 #9 RESPONSE of EEOC Commission in Support of Motion for Consolidation

1982

1-20 #10 ORDER-JBM

1. The motion of defendant to dismiss is denied.

2. The court intends to decide the merits of the claims and appropriate relief, if any, for those claims.

3. The related case C-C-77-082 is on appeal and I see no reason to try this case until that appeal has been determined.

4. If the Cooper case is re-tried, I will consolidate this case for the trial of any common issues.

5. No further action will be required of the parties in this case until the appeal in Cooper has been decided.

2-25 #11 MOTION to amend order of Jan. 20, 1982 handed to JBM

2-25 #12 STIPULATION by parties.

2-26 #13 ORDER (JBM)

1. Motion of the defendant to dismiss is denied.

2. The court intends to decide the merits of the claims and appropriate relief, if any, for those claims.

3. The related case C-C-77-82 is on appeal. I see no reason to try this case until that appeal has been determined, because that appeal might decide some questions pertinent to this case.

4. If the Cooper case has to be re-tried on any point I will consolidate this case and the Cooper case for trial of any common issues.

5. No further action will be required of the parties in this case until the appeal in Cooper has been decided. CC: counsel

6. Certification of interlocutory appeal granted. CC: counsel

3-29 #15 ORDER (FCCA) - that the joint motion to consolidate this appeal with case 72-82 is denied, but ordered that the clerk arrange to have these cases argued the same day before the same plan FCCA #81012 Certifying record on appeal this date to FCCA w/ltr to counsel

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 451, 1343 and 1345. This is an action authorized and instituted pursuant to Section 706(f)(1) and (3) and (g) of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. Section 2000e, et seq.

(Supp. VI, 1976), hereinafter referred to as "Title VII."

2. The unlawful employment employment practices alleged below were and are now being committed within the state of North Carolina and the Western Judicial District of North Carolina.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission, (hereinafter, the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f)(1), 42 U.S.C. Section 2000e-5(f)(1).

4. Since at least July 2, 1965, Defendant, Federal Reserve Bank of Richmond, (hereinafter, the Bank), has continuously been and is now a Virginia corporation, doing business in the state of North

Carolina and City of Charlotte, where it is engaged in the business of servicing banks within and without the state of North Carolina, and has continuously and does now employ more than fifteen employees.

5. Since at least July 2, 1965, the Company has continuously been and is now an employer engaged in an industry affecting commerce within the meaning Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e-(b), (g) and (h).

STATEMENT OF CLAIM

6. More than thirty (30) days prior to the institution of this lawsuit, a person claiming to be aggrieved filed a charge with the Equal Employment Opportunity Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least July 2, 1965, and continuously up until the present time, Defendant Bank has intentionally engaged in unlawful employment practices at its Charlotte facility in violation of Section 703(a) of Title VII. These policies and practices include but are not limited to the following:

(a) failing and refusing to promote blacks because of race;

(b) failing and refusing to promote an individual because of her race and sex;

(c) constructively discharging an individual because of her race and sex.

PRAYER FOR RELIEF

WHEREFORE, The Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, employees, successors, assigns and all persons in active concert or participation

with it from engaging in any employment practice which discriminates because of race and sex.

B. Order Defendant to institute and carry out policies, practices and affirmative action programs which provide equal employment opportunities for blacks and women, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole those persons adversely affected by the unlawful employment practices described herein, by providing appropriate back pay, with interest, in an amount to be proved at trial and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Grant such further relief as the Court deems necessary and proper.

E. Award the Commission its costs in this action.

Respectfully submitted,

ABNER W. SIBAL
General Counsel

WILLIAM L. ROBINSON
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
2401 "E" Street, N.W.

/s/
DONALD L. HOLLOWELL
Assistant General Counsel

/s/
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/s/
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Senior Trial Attorney

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, CONSTANCE RUSSELL, HELEN MOORE and ELMORE HANNAH, JR.,

Applicants in Intervention,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

COMPLAINT IN INTERVENTION

1. Intervenors hereby adopt and reallege paragraphs 1-7 of the original complaint.

2. Intervenors further invoke the jurisdiction of the Court pursuant to 42 U.S.C. § 2000e-5(g)(1) and further allege that defendant's employment practices violate 42 U.S.C. § 1981.

3. Intervenors are black citizens of the United States who reside in Mecklenburg County, North Carolina.

(a) Intervenor Sylvia Cooper was initially employed by the defendant at its Charlotte facilities in 1968. During her employment, she was discriminated against in promotions, wages, job assignments and other terms and conditions of employment and forced to terminate her employment on June 16, 1975, because of her race, color and sex.

(b) Intervenor Constance Russell was employed by the defendant on October 19, 1971, at its Charlotte

facilities. During her employment, she was discriminated against in promotions, wages, job assignments and other terms and conditions of employment and discharged on January 24, 1975, because of her race, color and sex.

(c) Intervenor Helen Moore was employed by the defendant in October, 1973, at its Charlotte facilities. During her employment, she has been and is continuing to be discriminated against in promotions, wages, job assignments and other terms and conditions of employment because of her race, color and sex. She is still employed by the defendant.

(d) Intervenor Elmore Hannah, Jr., was employed by the defendant in May, 1973. During his employment, he has been discriminated against in

promotions, wages, job assignments and other terms and conditions of employment and was discharged on March 13, 1976, because of his race and color and because he had complained about defendant's racially discriminatory practices.

4. (a) Intervenors bring this action as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class that intervenors seek to represent is composed of all black and female employees who have worked with the defendant at any time since July 2, 1965, and who have been adversely affected in their employment opportunities because of defendant's practices of discriminating against black and female employees because of their race, color and sex.

(b) The class consists of more than 50 past and present employees who have been, are presently or may in the future be adversely affected by the policies and practices of the defendant complained of herein. The class is so numerous that joinder of all members is impracticable.

(c) The policies and practices of the defendant deny, limit and restrict the employment opportunities of the intervenors and their class, limit and restrict their promotional opportunities and their employment options, subject them to discharge and termination, exclude them from employment and otherwise discriminate against them on the basis of their race, color and sex. The question of law and fact presented by these claims are common to the named intervenors

and the class they seek to represent. The claims of the named intervenors are typical of the claims of the class.

(d) Intervenors are adequate representatives of the class because they have suffered and are continuing to suffer as a result of the defendant's discriminatory practices and wishes to prosecute this action to pursue their legal rights and to insure that all blacks and females in their class are accorded equal employment opportunities as provided by Title VII and 42 U.S.C. § 1981, free of discrimination based on race, color or sex. Additionally, intervenor's counsel have extensive experience in the field of employment discrimination litigation, including class actions and are capable of prosecuting this

action on behalf of the intervenors and their class.

5. The defendant has followed and is presently following a pattern and practice of denying, limiting and restricting the employment opportunities of black and female employees solely of their race, color and sex. These practices are implemented in the following ways:

(a) Black and female employees are considered only for limited job positions with the defendant and are denied positions reserved for white or male employees;

(b) Black and female employees are discriminatorily denied promotions and consideration for promotion to positions limited to white or male employees;

(c) Black and female employees are discriminatorily denied equal

wages, or positions with higher wages and responsibilities and other fringe benefits;

(d) Black and female employees are disciplined in a discriminatory manner and are discriminatorily denied equal conditions, terms and benefits of employment;

(e) Black and female employees aree discriminatorily discharged, and intimidated and harassed when they complained about or seek redress from defendant's discriminatory practices;

(f) Intervenors were employed by the defendant and limited in and denied equal employment opportunities pursuant to defendant's employment practices described above;

(g) Intervenor Cooper was constructively discharged and the employment of intervenors Russell and

Hannah was terminated by defendant because of their race and sex and because they had complained about defendant's discriminatory employment practices;

(h) Intervenors and their class have suffered and are continuing to suffer substantial economic losses in wages because of defendant's discriminatory employment practices.

6. Each of the intervenors has timely filed charges of employment discrimination against the defendant with the Equal Employment Opportunity Commission. The Commission has instituted this proceeding pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e et seq. The intervenors are entitled to intervene in the proceeding pursuant to the Act. They have no other adequate or complete remedy.

WHEREFORE, the intervening plaintiffs respectfully pray:

1. That this action be certified as a class action pursuant to Rule 23(c) of the Federal Rules of Civil Procedure as a Rule 23(a), (b)(2) class action proceeding;

2. That a preliminary and permanent injunction be issued, enjoining the defendant, its agents, successors, employees, attorneys, servants and all persons in active concert or participation with them from continuing any employment practices or policies which discriminate against the intervenors and members of their class because of their race, color and/or sex;

3. That a preliminary and permanent injunction be issued, enjoining the defendant, its agents,

successors, employees, attorneys, servants and all persons in active concert or participation with them to reinstate intervenors Cooper, Russell and Hannah and others of their class and to place the intervenors and their class in job positions they would have enjoyed but for the defendant's discriminatory actions and practices;

4. That the intervenors and their class be awarded back pay and front pay, continuing until the intervenors and their class have been placed in job positions they would have occupied in the absence of defendant's discriminatory practices and policies;

5. That the intervenors and their class be awarded their costs, expenses and reasonable attorney fees; and

6. That the intervenors and their class be awarded such farther, additional or alternative relief as may be necessary in order to grant them the full and proper relief to which they are entitled under Title VII and 42 U.S.C § 1981.

This the 20th day of April, 1977.

Respectfully submitted,

/s/ J. LeVonne Chambers, Esq.

J. LEVONNE CHAMBERS
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Attorney for Applicants in Intervention

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, et al.,

Intervening Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

CONSENT ORDER

This matter is before the Court on the defendant's motion to certify this action as a class action and to designate the class.

This is an employment discrimination action. It was brought by the Equal Employment Opportunity Commission ("EEOC") on March 22, 1977, pursuant to Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(f)(1). The defendant is the Charlotte Branch Office of the Federal Reserve Bank of Richmond. The EEOC alleged in its Complaint that the defendant had discriminated against black persons in general in promotions; and had discriminated against an individual on account of her race and sex in denial of promotion and in constructive discharge. The EEOC's Complaint does not state any general allegation of sex discrimination, nor does it seek relief for any other person on account of sex discrimination. By order dated September 21, 1977, four black present or former employees of the defendant (three of which are

females) were allowed to intervene in this action. The intervenors alleged discrimination on account of race (and sex in the case of the three females), in promotions, wages, job assignments and terms and conditions of employment. The intervenors sought to represent a class of all blacks and females who worked for the defendant at any time since July 2, 1965. The defendant answered the Complaint in Intervention and denied the material allegations thereof.

The plaintiff-intervenors and the defendant have agreed upon a designation of the class to include all black persons who worked for the defendant at any time since January 3, 1974. The plaintiff-intervenors no longer seek to raise in this action any issues of sex discrimination.

The plaintiff and the defendant have agreed that the plaintiff's Complaint

states claims only as to the promotion of blacks in general and the denial of promotions and the constructive discharge of one individual, Sylvia Cooper, on account of her race and sex. The plaintiff and the defendant have also agreed that the plaintiff seeks relief for race discrimination only for those black persons who worked for the defendant since January 3, 1974; and that the plaintiff seeks relief for sex discrimination only for Sylvia Cooper. The plaintiff and the defendant have also agreed that the plaintiff may offer evidence relevant to sex discrimination in general in support of its claim for Sylvia Cooper, but that it does not seek a finding or ruling on the issue of sex discrimination in general or as to any individual other than Sylvia Cooper.

The Court finds from the pleadings, the evidence produced to date through

discovery and the briefs and arguments of counsel that the number of black employees who might have been or may be affected by the alleged racially discriminatory employment practices is so numerous as to make joinder of all such parties impracticable; that there are common questions of law and fact involved; that the claims and defenses of the individual plaintiff-intervenors are typical of the claims and defenses of the class which they seek to represent; that the plaintiff-intervenors will fairly and adequately protect the interest of the class they seek to represent; that the defendant has allegedly acted or refused to act on grounds generally applicable to the class thereby making appropriate final and injunctive or declaratory relief with respect to the class as a whole; and that the questions of law or fact common to the members of the class predominate over any

questions affecting only individual members and that class representation by the plaintiff-intervenors is superior to other available methods for the fair and efficient adjudication of the controversy.

For the foregoing reasons, the Court concludes that it is appropriate for the plaintiff-intervenors to represent a class pursuant to FRCP Rule 23(a), (b)(2) and (b)(3); that the class so certified shall include all black persons who worked for the defendant at any time since January 3, 1974; that the class members shall be notified of the pendency of this action; and that the designation of the class shall determine the scope of those persons represented by the plaintiff-intervenors. The Court further concludes that the persons for whom the plaintiff shall seek relief for race discrimination include all black persons who worked for the

defendant at any time since January 3, 1974; and that the persons for whom the plaintiff shall seek relief for sex discrimination includes only Sylvia Cooper.

IT IS THEREFORE ORDERED THAT:

1. The plaintiff-intervenors are certified to represent a class pursuant to FRCP Rule 23(a), (b)(2) and (b)(3).

2. The class of persons represented by the plaintiff-intervenors shall include all black persons who worked for the Federal Reserve Bank of Richmond at its Charlotte Branch Office at any time since January 3, 1974.

3. Notices of the pendency of this action shall be mailed certified mail, return receipt requested, to the last known address of each identifiable class member and published once per week for two consecutive weeks in the Charlotte Observer. Such notice shall be initiated within

30 days after the entry of this Order.

4. The defendant is directed to prepare and administer mailing and publication of the notice. The plaintiff-intervenors shall bear the cost of publication and certified mailing.

5. The attached notice is approved.

6. The persons for whom the plaintiff shall seek relief for race discrimination include all black persons who were employed by the defendant at any time since January 3, 1974; and the person for whom the plaintiff shall seek relief for sex discrimination includes only Sylvia Cooper.

7. Pursuant to FRCP Rule 23(c)(2), the class certification is conditional and may be altered or amended before a final decision on the merits.

This the 25 day of April, 1978.

/s/
James B. McMillan
United States District Judge

CONSENTED TO:

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28280
704/374-1300

By: /s/
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By: /s/
Attorneys for Inter-
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By: /s/
Atlanta Regional
Office of the
General Counsel

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, et al.,

Intervening Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

NOTICE OF PENDENCY OF CLASS ACTION

PLEASE READ CAREFULLY. THIS MAY AFFECT YOUR RIGHTS

NOTICE IS HEREBY GIVEN THAT:

1. A case entitled Equal Employment

Opportunity Commission v. Federal Reserve Bank of Richmond, Civil Action No. C-C-72-82, was filed in the United States District Court in Charlotte, North Carolina on March 22, 1977. By order dated September 21, 1977, certain black present and former employees of the defendant were allowed to intervene in the action. The plaintiff and the plaintiff-intervenors have alleged that the defendant has discriminated against blacks in promotions, wages, assignments, and other terms and conditions of employment. The defendant has denied and continues to deny these allegations.

2. Pursuant to an Order of this court, this notice is being published in order to inform interested parties of the pendency of this action, the certification of the plaintiff-intervenors to represent a class and the definition of that class and those persons for whom the plaintiff-inter-

venors may seek relief.

3. The class of persons who are entitled to participate in this action as members of the class represented by the plaintiff-intervenors, for whom relief may be sought in this action by the plaintiff-intervenors and who will be bound by the determination in this action is defined to include: all black persons who were employed by the Federal Reserve Bank of Richmond at its Charlotte Branch Office at any time since January 3, 1974.

4. If you fit in the definition of the class in paragraph 3 you are a class member. As a class member, you are entitled to pursue in this action any claim of racial discrimination in employment that you may have against the defendant. You need to do nothing further at this time to remain a member of the class. However, if you so desire, you may exclude yourself

from the class by notifying the Clerk, United States District Court, as provided in paragraph 6 below.

5. If you decide to remain in this action, you should be advised that: the court will include you in the class in this action unless you request to be excluded from the class in writing; the judgment in this case, whether favorable or unfavorable to the plaintiff and the plaintiff-intervenors, will include all members of the class; all class members will be bound by the judgment or other determination of this action; and if you do not request exclusion, you may appear at the hearings and trial of this action through the attorney of your choice.

6. If you desire to exclude yourself from this action, you will not be bound by any judgment or other determination in this action and you will not be able to depend

on this action to toll any statutes of limitations on any individual claims you you may have against the defendant. You may exclude yourself from this action by notifying the Clerk in writing that you do not desire to participate in this action. The Clerk's address is: Clerk, United States District Court, Post Office Box 1266, Charlotte, North Carolina 28232.

7. The plaintiff-intervenors are represented by J. LeVonne Chambers, Esq. Chambers, Stein, Ferguson & Becton, Suite 730, East Independence Plaza, 951 Independence Blvd., Charlotte, North Carolina 28202 (704) 375-8461. The plaintiff is represented by LaVerne S. Tisdale, Esq., Equal Employment Opportunity Commission, 1389 Peachtree Street, N.E., Atlanta, Georgia 30309, (404) 881-2176.

This the 25 day of April, 1978.

/s/
James B. McMillan
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, et al.,

Intervening Plaintiffs,

and

PHYLLIS BAXTER, BRENDA GILLIAM, GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Additional Applicants for Intervention as Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

MOTION FOR LEAVE TO INTERVENE AND TO FILE COMPLAINT-IN-INTERVENTION

Phyllis Baxter, Brenda Gilliam, Glenda Knott, Alfred Harrison, Emma Ruffin and Sherri McCorkle, by their undersigned counsel, respectfully move the Court for leave to intervene in the above-styled action and to file their attached complaint-in-intervention. In support of their motion, the movants show the Court the following:

1. This action was filed by plaintiff Equal Employment Opportunity Commission (EEOC) on March 22, 1977, alleging that the defendant discriminated against black employees at its Charlotte, North Carolina Branch in violation of Title VII, 42 U.S.C. § 2000e et seq.

2. Sylvia Cooper, Constance Russell, Helen Moore and Elmore Hannah, present and former black employees of defendant, were allowed to intervene on September 21, 1977.

3. Plaintiffs requested that the Court certify the action as a class action. The Court certified the action as to the intervenors pursuant to Rule 23(b)(2) and (3) and defined the class as all black employees of defendant at its Charlotte Branch office, who, at any time since January 3, 1974, have been discriminated against and denied equal employment opportunities by the Bank because of their race or color. The movants were within the class as initially defined by the Court and have been subjected to racially discriminatory employment practices by the Bank during the period designated by the Court.

4. The movants testified at the trial of this action and the Court, by Memorandum of Decision of October 29, 1980, indicated that it would rule that discrimination has been established as to the class only with respect to employees who were

employed in pay grades 4 and 5 during the relevant time period. Of the movants, only Ruffin and Harrison will be in the class for whom the Court has directed relief. The other movants have individual claims and wish to pursue their claims and to seek relief at the stage II proceedings directed by the Court.

5. The movants desire to protect their interests and entitlement to relief in this action and should be allowed to intervene for the following reasons:

(a) The intervening plaintiffs timely filed charges of discrimination with the Equal Employment Opportunity Commission.

(b) The additional applicants for intervention have been and will continue to be adversely affected by the

racially discriminatory practices of the Bank as found by the Court in its Memorandum Order and by the relief indicated in the Memorandum.

(c) The additional applicants for intervention wish to pursue their claims for relief with respect to the same transaction, occurence or series of transactions or occurrences complained of by the original plaintiff and intervenors. The claims of the additional applicants for intervention and of the original plaintiff and intervenors raise common questions of law and fact.

(d) The additional applicants for intervention have subtantial interest in the subject matter of this action.

(e) The additional applicants for intervention may be bound by any judgment in this action relating to the elimination of racially discriminatory employment practices by the Bank and by the relief which may be directed by the Court.

(f) Intervention will not delay or prejudice the adjudication of the rights of the original parties to the proceeding. All evidence pertaining to movants'

claims was produced at trial, except the additional evidence to be produced by all parties at stage II of this proceeding.

WHEREFORE, the additional applicants for intervention respectfully pray that they be allowed to intervene in this proceeding as parties plaintiff and that they be allowed to file the attached Complaint-In-Intervention.

This 23rd day of March, 1981.

Respectfully submitted,

/s/

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704/375-8461

Attorney for Intervening Plaintiffs and Additional Applicants for Intervention

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, et al.,

Intervening Plaintiffs,

and

PHYLLIS BAXTER, BRENDA GILLIAM, GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Additional Applicants for Intervention as Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

COMPLAINT-IN-INTERVENTION

1. Intervenors hereby adopt and re-

allege paragraphs 1-6 of the original intervenors' Complaint-in-Intervention and prayer for relief.

2. Intervenors Phyllis Baxter, Branda Gilliam, Glenda Knott, Alfred Harrison, Emma Ruffin and Sherri McCorkle are black citizens of the United States. The intervenors reside in Mecklenburg County, North Carolina.

3. Intervenors were employed by defendant at its Charlotte Branch and were subject to discriminatory employment practices by the Bank pursuant to the same policies and practices as alleged in the original complaint.

(a) Intervenor Baxter was employed by the Bank on October 5, 1970, as a grade 5 accounting clerk. She promoted to a grade 6 reconcilement clerk in May 1971. Between 1975 and 1978, she applied for several

positions which would have enabled her to promote to higher job positions. She was denied the job positions she requested because of her race and color.

(b) Intervenor Gilliam was employed by the Bank on January 30, 1973, as a grade 4 clerk. She promoted to grade 5 on July 29, 1974. She applied for a junior computer console position in November, 1976, and was denied the position because of her race.

(c) Intervenor Knott was employed by the Bank on April 20, 1970. She had previously been employed by the Federal Reserve System in Washington as a grade 9 employee. She started with the Bank as a grade 5 and is now a grade 9. Despite her training and job performance, she has

continuously been denied promotion to supervisory positions and to management because of her race.

(d) Intervenor Harrison was employed by the Bank as a grade 3 employee in 1975. He tried to promote to a guard position in defendant's Security Department and was denied the position because of his race.

(e) Intervenor Ruffin was employed by the Bank on June 5, 1972, as a grade 3 messenger. She promoted to a grade 4 addressograph messenger in 1974, and has continuously been denied promotion out of grade 4 because of her race.

(f) Intervenor McCorkle was employed as a grade 4 employee in November, 1972. She is now a grade 7 employee but has continuously been

denied promotion to a higher grade because of her race.

4. The intervenors have suffered and are continuing to suffer substantial economic losses in wages because of the discriminatory practices of the Bank.

WHEREFORE, the intervening plaintiffs respectfully pray:

1. That the Court issue a declaratory judgment holding that the acts and practices of the Bank as complained of herein are violative of Title VII and 42 U..C. §1981.

2. That the Court issue a permanent injunction, enjoining the discriminatory practices of the Bank.

3. That the Court order such affirmative relief for the intervenors so as to place them in the job positions they would have occupied but for the Bank's racially discriminatory practices.

4. That the Court award the intervenors back pay and front pay until they are placed in their rightful positions.

5. That the Court award the intervenors their costs, expenses and reasonable attorney fees and such other relief to which they may be entitled under Title VII and 42 U.S.C. § 1981.

6. That the Court grant the relief as prayed for by the original plaintiffs.

This 23rd Day of March, 1981.

Respectfully submitted,

/s/
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Suite 703 East Independence Plaza
951 South Independence Boulevard
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704/375-8461

Attorney for Intervening Plaintiffs and Additional Applicants for Intervention

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

SYLVIA COOPER, et al,

Intervening Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

JUDGMENT

Based on the Findings of Fact and Conclusions of Law previously filed herein, the Court enters the following Judgment. This Judgment is limited to the branch facilities of the defendant in Charlotte, North Carolina.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This action is certified as a class action under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The class is defined as follows:

> All black employees who were employed by the defendant Federal Reserve Bank of Richmond (hereinafter referred to as "the Bank") at its Charlotte, North Carolina facilities at any time between January 3, 1974, and September 8, 1980, and who have been discriminated against because of their race in promotions, training, wages, discipline and discharge.

The Court will hereafter enter a separate order requiring that an appropriate notice be served on all class members.

2. The Bank is directed to post a copy of this Judgment in each of its Departments within ten (10) days from the date of this Judgment. The Judgment shall remain posted for sixty (60) days. The

Bank shall also publish a copy of this Judgment in the next issue of Southern Accent, following the date of this Judgment. The Bank shall certify to the Court within fifteen (15) days following the last publication provided for herein that it has complied with the provisions of this paragraph.

3. The Bank shall reinstate Intervenors Sylvia Cooper and Constance Russell, within thirty (30) days following the date of this Judgment, in job positions and pay grades comparable to those they held prior to the termination of their emplolyment. The Bank shall also promote Cooper and Ruseell to the supervisory positions they had requested at the next vacancies in their positions. The Bank, its agents, servants and employees and all persons acting in concert or participation with them are specifically enjoined not to

discriminate against or to harass or intimidate Cooper or Russell because of their race or because of their participation in this proceeding or other efforts to enforce their rights under Title VII.

4. The Bank shall pay back pay to Intervenors Cooper and Russell for any loss of income they have sustained because of the Bank's discriminatory employment practices. Cooper shall be awarded loss of income from the date of John M. Morgan's promotion on February 10, 1975, until the date of her reinstatment as directed in paragraph 3 above. Additionally, Cooper shall be awarded front pay from the date of her reinstatement until she is promoted to the supervisory position she requested or to a higher paying job position, whichever first occurs. Front pay shall be computed as the difference between her pay after reinstatment and the top pay of utility

supervisors in Check Collection. Russell shall be awarded back pay from February 4, 1974, until her reinstatement as directed in paragraph 3 above. Russell's back pay shall be based on the difference between her earnings from February 4, 1974, and what she would have earned from that date as a utility clerk A. Russell shall also be paid front pay from the date of her reinstatement until she is promoted to or assigned as a utility clerk A or to a higher paying job position, whichever first occurs. Cooper and Russell shall also receive adjustments in their fringe benefits based on the salaries they would have received as supervisors and shall be awarded interest on the awards provided for herein, assessed at the proper rate.

5. Members of the class of employees in grade 4 and 5 who were denied promotion or delayed in promotion are entitled to

participate in stage II proceedings in which they are entitled to a presumption that they were discriminated against. They may be awarded back pay from January 5, 1974 until they are or were promoted to job positions they would have held in the absence of discrimination. Class members' entitlement to back pay shall be referred to a Master for recommendations. The Master shall receive evidence from the interested parties and, based on the instructions which shall follow in a separate order, shall make proposed findings and recommendations with respect to any injunctive relief and the amount of back pay together with adjustments in fringe benefits and interest compounded as provided in paragraph 4 above, each class member should receive. The Master shall also receive evidence from the parties regarding back and front pay to be awarded

to Cooper and Russell. The Court has already found that Cooper and Russell are entitled to monetary award. For Cooper and Russell, therefore, the Master shall limit his findings and recommendations to the amount of the awards adjustments in fringe benefits and interest.

6. Within six (6) months from the date of this Judgment and annually thereafter, on or before March 15, during the Court's retention of this action, the Bank shall submit reports to plaintiffs' counsel and to the Court setting forth the following information:

(1) A list of the name, race, date of hire, department and job position of each employee of the Bank in pay grades 4 and 5.

(2) A list of the name and race of each employee who has, during the reporting period, promoted or been transferred from pay grades 4 and 5, and the job position and

pay grade to which the employee was promoted or assigned. Job re-evaluations shall be considered a promotion for purposes of this reporting provision if the job is reclassified to a higher pay grade.

(3) A list by name, race and date of all employees who were discharged or suspended during the reporting period.

7. The Bank shall also advise plaintiffs' counsel and the Court of the date or dates of reinstatement of intervenors Cooper and Russell, the job positions and pay grades to which they are assigned and of any changes, promotions or transfers affecting Cooper and Russell during the reporting period. If a supervisory vacancy develops in the job positions Cooper and Russell have requested and either is not selected for the position, the Bank shall report in detail the reason or reasons why either was not selected for the positions.

8. The Bank shall designate an individual who will be responsible for preparing and submitting the reports provided for in paragraphs 6-7 and for carrying out the provisions of this Judgment. The name and address of the individual shall be given to plaintiffs' counsel and the Court within thirty (30) days of the entry of this Judgment.

9. Plaintiffs are the prevailing parties in this action. The Bank shall pay plaintiffs' costs and shall pay the intervening plaintiffs' reasonable attorney fees, costs and expenses, including expert witness and consultation fees, paralegal time and unusual clerical time for all work performed in this proceeding until the date of this Judgment in accordance with the accompaying Memorandum of Decision as to Fees.

10. Intervenors' counsel shall also receive reasonable attorney fees, costs and expenses, including paralegal time and other proper expenses, for all future work done on behalf of the intervenors and class members (including the individuals named in paragraph 5) for all proceedings in which they prevail before The Master and for work done in the implementation of this Judgment, including fees and expenses for monitoring and examining the various reports required, in answering questions of the class members and in investigating any alleged violations of this Judgment.

11. The action as to Helen Moore and Elmore Hannah shall be dismissed with prejudice. As to the other plaintiffs and class members in grades 4 and 5, however, the Court will retain jurisdiction of the action for two years from the entry of this Judgment. The status of the action will be

reviewed at that time and the action will be dismissed unless the Court finds it necessary to extend the period for retention of the Court's jurisdiction.

This 29 day of May, 1981.

/s/
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-81-195

==========

PHYLLIS BAXTER, BRENDA GILLIAM, GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

COMPLAINT

I.

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343, this being an action seeking enforcement of rights secured to plaintiffs by the Thirteenth Amendment to the Constitution of the United

States and 42 U.S.C. § 1981. As described more fully hereinafter, defendant has denied equal employment opportunities to the plaintiffs solely because of their race and color in violation of 42 U.S.C. § 1981.

II.

Plaintiffs are black citizens of the United States and residents of Mecklenburg County, North Carolina. Plaintiffs are present and former employees of the defendant and worked at defendant's Charlotte, North Carolina branch.

III.

Defendant is a federally chartered corporation with its home office in Richmond, Virginia. Defendant operates a branch facility in Charlotte, North Carolina, where it employs in excess of 300 employees annually. The discriminatory employment practices which plaintiffs seek to challenge herein all occurred at

defendant's Charlotte Branch. Thus, defendant is subject to suit in its corporate name and venue is properly placed with respect to the practices alleged herein, in the United States District Court for the Western District of North Carolina, Charlotte Division.

IV.

Between 1974 and the date of this action, defendant has denied the plaintiffs equal employment opportunities solely because of their race and color. Specifically:

(a) Phyllis Baxter was employed by the defendant on October 5, 1970, as a Grade 5 Accounting Clerk. She promoted to a Grade 6 Reconcilement Clerk in May, 1971. Between 1975 and 1978, she applied for several positions with the Bank which would have constituted a promotion or would have

enabled her to promote to high job positions. She was qualified for the positions, vacancies existed but she was denied the positions because of her race and color.

(b) Brenda Gilliam was employed by the defendant on January 30, 1973, as a Grade 4 Clerk. She promoted to Grade 5 on July 29, 1974, to Grade 6 in 1975 and to Grade 6 in 1977. She applied for a junior Computer console position in November, 1976. She was qualified for the position, a vacancy existed but she was denied the position because of her race and color.

(c) Glenda Knott was employed by the defendant on April 20, 1970. She had previously been employed by the Federal Reserve System in Washington, D.C. as a Grade 9 employee. She was

required to start with defendant as a Grade 5 employee with a substantial cut in pay. She subsequently was allowed to promote to pay Grade 9. Between 1974 and the present, however, she has continuously requested supervisory and management positions. Although qualified for the positions and vacancies existed, she has been denied supervisory and management positions solely because of her race and color.

(d) Alfred Harrison was employed by the defendant as a Grade 3 employee in 1975. He tried to promote to a Guard or Security position. He was qualified for the position, vacancies have existed but he has been denied the position becuase of his race, and color.

(e) Sherri McCorkle was employed by defendant as a Grade 4 employee in November 1972. She has promoted to a Grade 7 job position. She has requested promotions to higher pay grades, was qualified, vacancies existed but she has been denied promotions solely because of her race and color.

Plaintiffs have suffered substantial economic losses because of defendant's racially discriminatory employment practices. Plaintiffs can obtain relief only through this equitable proceeding seeking enforcement of plaintiffs' rights under 42 U.S.C. § 1981.

WHEREFORE, plaintiffs respectfully pray:

1. That the Court issue a declaratory judgment holding that the acts and practices of the defendant as complained of

herein violate plaintiffs' rights under 42 U.S.C. § 1981.

2. That the Court permanently enjoin the defendant from denying equal employment opportunities to the plaintiffs because of their race and color.

3. That the Court order such affirmative relief for the plaintiffs as may be necessary and appropriate to place the plaintiffs in the positions they would otherwise hold but for defendant's racially discriminatory employment practices.

4. That the Court award the plaintiffs back pay and front pay until they are placed in their rightful positions.

5. That the Court award plaintiffs their costs, expenses and reasonable attorney fees and such other relief as may be necessary and appropriate.

This 12th day of May, 1981.

Respectfully submitted,

/s/

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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-77-82

==========

PHYLLIS BAXTER, BRENDA GILLIAM, GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

MOTION TO DISMISS

Pursuant to Rule 12 of Federal Rules of Civil Procedure the defendant moves to dismiss the plaintiffs' Complaint. Each of the plaintiffs was a class member in a prior action in which there was an adverse determination regarding their class. Consequently, their claims in this action

are barred by res judicata.

In support of this motion the defendant shows as follows:

I. BACKGROUND

On March 22, 1977, a case entitled Equal Employment Opportunity Commission v. Federal Reserve Bank of Richmond, Civil Action C-C-77-82, was filed in the United States District court in Charlotte, North Carolina. By Order dated September 21, 1977, certain black present and former employees of the defendant were allowed to intervene in the action. Subsequently, on April 26, 1978, the court entered a Order granting the plainitffs' motion for class certification and conditionally defining the class as follows:

> All black employees who were employed by the Federal Reserve Bank of Richmond at its Charlotte Branch office at any time since January 3, 1974 [six months prior to the first charge filed

by the intervenors with the EEOC], who have been discriminated against in promotion, wages, job assignments and terms and conditions of employment because of their race.

A copy of the Notice of Pendency of Class Action which was issued by the Court is attached. Included in the notice was the following language:

> 3. The class of persons who are entitled to particpate in this action as members of the class represented by the plaintiff-intervenors, for whom relief may be sought in this action by the plaintiff-intervenors and who will be bound by the determination in this action defined....
>
> 4. ...if you so desire, you may exclude yourself from the class by notifying the Clerk, United States District Court, as provided in paragraph 6 below.
>
> 5. If you decide to remain in this action, you should be advised that: the court will include you in the class in this action unless you request to be excluded from the class in writing; the judgment in this case, whether favorable or unfavorable to the plaintiff-intervenors, will include all members of the class; all class members will be bound by the judgment or other determination of this action;....

> 6. If you desire to exlcude yourself from this action, you will not be bound by any judgment or other determination in this action and you will not be able to depend on this action to toll any statutes of limitations on any individual claims that you may have against the defendant....

The class action was tried before the Court in September, 1980. On May 29, 1981, the Court filed a Judgment and a Memorandum of Findings of Fact and Conclusions of Law. The action was certified as a class action under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure, and the class was defined in the Judgment as follows:

> All black employees who were employed by the Defendant Federal Reserve Bank of Richmond at its Charlotte, North Carolina facilities at any time between January 3, 1974, and September 8, 1980, and who have been discriminated against because of their race in promotions, training, wages, discipline and discarge.

The court found that there was discrimina-

tion in the subclass of black employees who were in pay grades 4 and 5. The Court further found that there was no showing that the defendant had discriminated against black employees with respect to promotions out of grade 6 and above.

The plaintiffs in the current action were non-named members of the class in the previous action. They were not in the subclass of employees in pay grades 4 and 5, and consequently, they were not entitled to any relief as a result of the class action. The plaintiffs subsequently filed a motion to intervene as individual plaintiffs in the class action. The motion was denied on May 29, 1981. The plaintiffs have now brought this action alleging the same claims of discrimination by the defendant as were tried in the class action.

II. THE PLAINTIFFS' CLAIMS ARE BARRED BY RES JUDICATA

The plaintiffs' claims in the present action are barred by the doctrine of res judicata. The well established rule of law is that a judgment or court approved settlement entered in a properly certified class action binds an absent class member. Penson v. Terminal Transport Company, 634 F.2d 989 (5th Cir. 1981); Fowler v. Birmingham News Company, 608 F.2d 1055 (5th Cir. 1979). The purpose of this rule supports the reasons for allowing class actions in the first place. That is, to dispose of the claims of numerous parties in one proceeding. Such a rule allows parties to avoid multitudinous litigation as well as contributes to judicial economy. Wetzel v. Liberty Mutual Insurance Company, 508 F.2d 239 (3rd Cir. 1975).

Two cases that are similar to the

present action are Kemp v. Birmingham News Company, 608 F.2d 1049 (5th Cir. 1979) and Fowler v. Birmingham News Company, 608 F.2d 1055 (5th cir. 1979). In each of those cases the plaintiffs brought actions for individual claims against the defendant. At the time of each trial, judgment had been entered in a class action, Cook v. The Birmingham News, CA-73-M- 514 (N.D. Ala. 1975). Judge Johnson of the Fifth Circuit held in both the Kemp and Fowler cases that the individual claims were barred by the previous judgment. A two-pronged test as to whether the judgment in a class action will bind the members of the class was set forth in Kemp as follows:

> 1. Did the trial court in the first suit correctly detemine, initially, that the representative would adequately represent the class? and
>
> 2. Does it appear after determination of the suit that the class

> representative adequately protected the interest of the class? [Kemp, supra, at 1054].

Applying the test to the present factual situation requires that these plaintiffs be bound by the prior, adverse judgment and that the present action be dismissed. There is no question but that the court correctly determine that the representatives would adequately represent the class. The present plaintiffs never objected to their represntation. In addition, the record demonstrates that the representatives did in fact protect the interests of the class. Moreover, the plaintiffs in the present action were present at the trial of the class action and actually testified regarding their claims. Under the circumstances, it is difficult to imagine how their interests could have been better represented than

they were. Consequently, the plaintiffs are not entitled to have a second day in court to relitigate issues that have been previously determined in a proceeding which met all due process requirements.

The binding effect of judgments in class actions is augmented by the due process protections incorporated in the criteria and procedures set forth in Rule 23. These protections are the determination by the court of the adequacy of representation and of notice of the proceedings. Wetzel v. Liberty Mutual Insurance Company, 508 F.2d 239, 256 (3rd Cir. 1975). There are no allegations in the present Complaint that the plaintiffs were not adequately represented in the class action or that they did not receive adequate notice of their rights regarding avoiding being bound by the judgment by excluding themselves from the class. After

being fully notified of their options and the consequences of each option, each present plaintiff elected to litigate his claims via the class action. Further, they made this decision knowingly since the language in the Notice of Pendency of the class action clearly sets forth that the class members would be bound if they did not opt out.

The only situation our research has disclosed where class members have been permitted to re-litigate their claims as individuals after an adverse ruling in a class action is where there was some failure of the due process protection mechanisms in the class action -- that is, inadequate representation or lack of notice. See, Harper v. Kloster, 486 F.2d 1134 (4th Cir. 1973)(inadequte reqpresentation); Penson v. Terminal Transport Co., 634 F.2d 989 (5th Cir. 1981)(lack of

notice); Johnson v. General Motors Corp., 598 F.2d 432 (5th Cir. 1979)(lack of notice). Neither such defect is present here, so the present plaintiffs are bound by the judgment in the previous class action.

III. THE PLAINTIFF'S CLAIMS ARE BARRED BY THE POLICY AND PHILOSOPHY REGARDING RULE 23

If the plaintiffs in the present case are not barred from filing new suits by the judgment in the prior class action, the purpose and the meaning FRCP of Rule 23 would be negated. The history of Rule 23 demonstrates that Congress did not mean for plaintiffs to have the option of pursuing their claims through a class action and in addition have a right to separate ajudication of invididual claims. See Advisory Committee Notes 39 FRD 60, 102; American Pipe and Construction Co. v. Utah, 414 U.S.

538, 38 .Ed.2d 713, 94 S.Ct. 756 (1974). Just as the plaintiffs should not have been allowed to intervene in the class action at the late date which they made their motion, they cannot now bring a separate action to litigate the same issues which were considered in the class action. The Court in American Pipe and Construction Co. ably sets forth the law as well as the reasons for the binding effect a judgment in a class action will have on individual claimants:

> A recurrent source of abuse under the former Rule lay in the potential that members of the claimed class could in some situations await developments in the trial or even final judgment on the merits in order to determine whether participation would be favorable to their interests. If the evidence at the trial made their prospective position as actual class members appear weak, or if a judgment precluded the possibility of a favorable determination, such putative members of the class who chose not to intervene or join as parties would not be bound by the judgment. This situa-

tion - the potential for so-called "one-way intervention" - aroused considerable criticism upon the ground that it was unfair to allow members of a class to benefit from a favorable judgment without subjecting themselves to the binding effect of an unfavorable one. The 1966 amendments were designed, in part, specifically to mend this perceived defect in the former Rule and to assure that members of the class would be identified before trial on the merits and would be bound by all subsequent orders and judgments.

Under the present Rule, a determination whether an action shall be maintained as a class action is made by the Court "[a]s soon as practicable after the commencement of an action brought as a class action...." Rule 23(c)(1). Once it is determined that the action may be maintained as a class action under subdivision (b)(3), the court is mandated to direct to the members of the class "the best notice practicable under the circumstances" advising them that they may be excluded from the class if they so request, that they will be bound by the judgment, whether favorable or not if they do not request exclusion, and that a member who does not request exclusion may enter an appearance in the case. Rule 23(c)(2). Finally, the present Rule provides that in Rule 23(b)(3) actions the judgment shall include all those found to be members of the class who have received notice and who have not requested exclusion.

> Rule 23(c)(3). Thus, potential class members retain the option to participate in or withdraw from the class action only until a point in the litigation "as soon as practicable after the commencement" of the action when the suit is allowed to continue as a class action and they are sent notice of their inclusion within the confines of the class. Thereafter they are either nonparties to the suit and ineligible to participate in a recover or to be bound by the judgment or else they are full members who must abide by the final judgment, whether favorable or adverse.
> [38 L.Ed.2d at 744 (Emphasis added and footnotes omitted)]

Finally, the only result which supports the logic behind allowing class actions is to dismiss the plaintiffs' Complaint. There is nothing to distinguish these five plaintiffs from any other unsuccessful class members. Therefore, allowing them to proceed here means that a defendant who is completely successful in defending and defeating a class action would nevertheless be subject to further suits brought by each and every individual

included in the class. The latter result is not and should not be the law. The plaintiffs have had their day in court. There was a full and fair trial of their claims and the judgment was adverse to their claims. They are entitled to no more.

WHEREFORE, the defendant prays that the Court enter judgment of dismissal of the plaintiffs' Complaint in its entirety.

Respectfully submitted,

This 1st day of July, 1981.

MOORE AND VAN ALLEN
3000 NCNB Plaza
Charlotte, North Carolina 28280
Telephone: (704) 374-1300

By /s/
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-81-195

==========

PHYLLIS BAXTER, et al.,

Petitioners,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

==========

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Defendant has moved to dismiss this proceeding contending (1) that it is barred by res judicata as a result of the judgment entered in EEOC v. Federal Reserve bank of Richmond, ___ F. Supp. ___ (Civ. No. C-C-77-82, March 29, 1981) and (2) that maintemance of this proceeding is inconsistent with the policy and philosophy of Rule

23, Federal Rules of Civil Procedure. Plaintiffs respectfully submit that defendant's motion should be denied.

I.

Plaintiffs' Action Was Instituted Pursuant To The Express Authorization Of The Court

By Order of May 28, 1981, the Court denied plaintiffs' motion to intervene in Civil Number C-C-77-81, stating:

> The pendency of this acion has apparently tolled the rights of the would be intervenors to file separate individual actions preceded by claims filed with the EEOC as to Title VII rights, and it has also apparently tolled their rights to file suit under 42 U.S.C §1981.
>
> I see no reason, why, if any would be intervenors are actively interested in pursuing their claims, they cannot file a Section 1981 suit next week, nor why they could not file a claim with EEOC next week ...

II.

Plaintiffs' Action Is Not Barred by Res Judicata

Prior to and at the hearing in No. C-C-77-82, defendant moved that the Court not consider the individual claims of plaintiffs and accept their testimony only as it tended to support the class claim that black employees in plaintiffs' pay grades -- grade 6 and above -- were discriminated against. The Court limited its consideration to plaintiffs' testimony in that respect. Plaintiffs' counsel understood that no determination would be made as to plaintiffs' individual claims. Defendant offered no evidence bearing on the individual claims. Indeed, it was understood that that issue was not being resolved at that stage of the proceeding.

Following the trial, plaintiffs proposed that the Court make findings that

the plaintiffs here had suffered from discriminatory employment practices by defendant or at least hold that their individual claims be referred to the Maaster who was to make proposed findings on relief. Defendant objected and the Court denied plaintiffs' request. As indicated, the Court also denied plaintiffs' motion to intervene in order to pursue their individual claims, since defendant had neither prepared for nor addressed that issue.[1/]

> Res Judicata required:
>
> (1) that the prior judgment must have been rendered by a court of competent jurisdiction: (2) that there must have been a final judgment on the merits; (3) that the parties, or those in privity with them, must be identical in both suits; and (4) that the same cause of action must be involved in both suits.

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1/ See Defendant's Response to Motion to Intervene of April 6, 1981, p. 3, citing and quoting Dickerson v. United States Steel Corp., 582 F.2d 827 (3d Cir. 1978).

Stevenson v. International Paper Co., 516 F.3d 103, 109 (5th Cir. 1975). (Emphasis added)

The fourth element is missing here. See Dickerson, supra at 830-831:

> The district court's finding of an absence of class-wide discrimination is not necessarily inconsistent with a claim that discrete, isolated instances of discrimination occurred, for which the statistical evidence of a pattern of discrimination may have been lacking; there may have been sufficient evidence to establish a prima facie case of discrimination directed against specific employees. Therefore, the court's decision as to the class-wide claims of discrimination does not, as a matter of res judicata, bar class members from asserting individual claims of personal discrimination. Moreover, not only are the proofs different between class action claims and individual claims of discrimination, but so are the judgments and their binding effect.

See also Patterson v. American Tobacco Co., 535 F.2d 257, 275 n.18 (4th Cir. 1976), cert. den.

> If the company discriminates against a black or a woman, it can be called

to account for violating Title VII, regardless of the percentage of blacks and women among its supervisors.

The cases cited by defendant, Penson v. Terminal Transport Company, 634 F.2d 989 (5th Cir. 1981) and Fowler v. Birmingham News Company, 608 F.2d 1055 (5th Cir. 1979), do not require a different result. Both involved prior settlement agreements in proceedings raising the same issues the plaintiffs were seeking to litigate but also relief to the plaintiffs in which they participated.

III.

Maintenance Of These Proceedings Does Not Cause Violence To The Policy and Philosophy Of Rule 23

While Rule 23 is designed to promote convenience to and reduced costs of the parties as well as protection for plaintiffs and defendants, its use is not designed to deprive parties unfairly of

their day in Court. As indicated in Dickerson, supra, class claims and individual claims present separate and distinct issues. Resolution of one does not necessarily foreclose consideration of the other.

For example, in Sledge v. J.P. Stevens & Co., Inc., 585 F.2d 625, 636-638 (4th Cir. 1978), the Court indicated the necessity for considering the two issues separately and in different order. If class liability is established, individual claimants are entitled to certain presumptions of liability. If class liability is not established, individual claims are not foreclosed; rather, individual claimants must proceed without the presumptions of liability that would flow from a determination of class liability. Thus, individual

claims are not foreclosed in either case.[2/]

For the above reasons, plaintiffs submit that the defendant's motion for dismissal should be denied.

This 10th day of June, 1981.

Respectfully submitted,

/s/
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Attorney for Plaintiffs

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2/ American Pipe and Construction Co. v. Utah, 414 U.S. 538 (1974), is not contrary. The Court there considered tolling of the statute of limitations as to class members with the filing of a class claim. The Court did not address the issue presented here whether an adverse determination as to the class, addressing only whether the defined class had been discriminated against, would foreclose an individual claim of a class member specifically excluded from consideration at trial.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-81-195

==========

PHYLLIS BAXTER, BRENDA GILLIAM, GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

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S T I P U L A T I O N

The parties hereby stipulate that:

1. On March 22, 1977, a case entitled Equal Employment Opportunity Commission v. Federal Reserve Bank of Richmond, Civil Action No. C-C-77-082, was filed in the United States District Court in Charlotte, North Carolina. By Order dated

September 21, 1977, certain black present and former employees of the defendant were allowed to intervene in the action as representatives of a class. Subsequently, on April 26, 1978, upon the consent of the parties, the District Court entered an Order conditionally certifying the class in that action and defining the "aggrieved persons" on whose behalf the EEOC could seek relief. A copy of that Order is attached as Exhibit 1.

2. The Court also issued a Notice of Pendency of Class action which is attached as Exhibit 2. That Notice was mailed to class members and published in the Charlotte Observer. Each of the plaintiffs in this action received the Notice.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil Action No. CC-81-195

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GLENDA KNOTT, EMMA RUFFIN, ALFRED HARRISON and SHERRI McCORKLE,

Plaintiffs,

v.

FEDERAL RESERVE BANK OF RICHMOND

Defendant.

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O R D E R

Several motions presently pending are decided as follows:

1. The motion of the defendant to dismiss is denied.

2. The court intends to decide the merits of the claims and appropriate relief, if any, for those claims.

3. The related case, C-C-72-082, Equal Employment Opportunity Commission and Slyvia Cooper, et al. v. Federal Reserve Bank of Richmond, is on appeal to the Fourth Circuit Court of Appeals from a judgment entered in this case on May 29, 1981. I see no reason to try this case until that appeal has been determined, because that appeal might decide some questions pertinent to this case.

4. If the Cooper case has to be re-tried on any point, I will consolidate this case and the Cooper case for the trial of any common issues.

5. No further action will be required of the parties in this case until the appeal in Cooper has been decided.

6. I certify that the issues disposed of by this Order involve controlling questions of law as to which there is

substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the termination of tne litigation.

IT IS SO ORDERED, this 12th day of February, 1982.

/s/
James B. McMillan
United States District Judge